TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1903~~ 1904.

No. ~~235~~ 68.

THE UNITED STATES, APPELLANT,

vs.

THE UNITED VERDE COPPER COMPANY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

FILED JUNE 27, 1904.

(18986.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 335.

THE UNITED STATES, APPELLANT,

vs.

THE UNITED VERDE COPPER COMPANY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

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1 In the supreme court of the Territory of Arizona.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
UNITED VERDE COPPER COMPANY, A corporation, defendant.

Be it remembered that heretofore and on, to wit, the 20th day of December, A. D. 1902, there was filed in said supreme court the transcript on appeal in the said above-entitled cause, which said transcript on appeal is in the words and figures as follows, to wit:

2 In the district court of the fourth judicial district of the Territory of Arizona, having and exercising the same jurisdiction in all cases arising under the Constitution and laws of the United States as is vested in the district and circuit courts of the United States.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
UNITED VERDE COPPER COMPANY, A corporation, defendant.

Comes now the above-named plaintiff and files this, its amended complaint, and alleges:

I.

That defendant is and at all times hereinafter mentioned has been a corporation, having its residence and principal place of business at Jerome, Yavapai County, Arizona Territory.

II.

That one Rafael Lopez did sell and deliver to the said defendant corporation and the said defendant corporation did buy from the said Rafael Lopez a large quantity of timber, to wit, six thousand four hundred ninety-six and one-eighth (6,496⅛) cords of wood.

3 III.

That the said timber and wood was wrongfully cut and caused to be cut and removed and caused to be removed by the said Rafael Lopez from unsurveyed public mineral lands of the United States, to-wit: that certain land in Mingus Mountains also known as Black Hill, which would be, if surveyed, townships 13 and 14 north, range 3 east, Gila and Salt River base and meridian, all in the county of Yavapai, Territory of Arizona, between the 15th day of February, 1900, and the 17th day of April, 1901, and was then and there sold to and bought by the said defendant, as aforesaid; that said Rafael Lopez was then and there a citizen of the United States and a bona fide resident of the Territory of Arizona.

IV.

That the value of said timber is the sum of ($6) six dollars per cord and of the aggregate value of thirty-eight thousand nine hundred seventy-six and 75/100 ($38,976.75) dollars.

V.

That all of said timber belonged to and was the property of the United States of America and that all of said timber was used and consumed by the said defendant.

VI.

Plaintiff further alleges that the said timber was used and con-
4 sumed by the said defendant for the purpose of roasting ore at the United Verde Copper mines, said mines being the property of defendant herein, at Jerome, Yavapai County, Arizona Territory, in violation of the act of Congress of June 3rd, 1878, and of the rules and regulations of the Secretary of the Interior, promulgated under the authority of said act of Congress.

Wherefore, plaintiff prays judgment against defendant for the sum of $38,976.75, lawful money of the United States of America and for its costs and disbursements in this action incurred.

FREDERICK S. NAVE,
United States Attorney for the Territory of Arizona.

5 In the district court of the fourth judicial district in and for the county of Yavapai, Territory of Arizona, having and exercising the same jurisdiction in all cases arising under the Constitution and laws of the United States as is vested in district and circuit courts of the U. S.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
UNITED VERDE COPPER COMPANY, A CORPORATION, DEFENDANT.
} Amended answer.

The above-named defendant comes, and for its amended answer says:

FIRST.

It excepts to the sufficiency of plaintiff's complaint and demurs thereto—

1. Because said complaint does not state facts sufficient to constitute a cause of action against defendant.

2. Because said complaint alleges the cutting of timber from the public mineral lands of the United States for the purpose of roasting ores, which defendant had the right to do under act of June 3rd, 1878,
6 act of Congress of the United States, the said act of roasting ore being a purpose and part of defendant's mining business, and therefore licensed and permitted by said act of Congress.

Wherefore defendant prays judgment for cost and for general relief.

HAWKINS & WILSON,
Attorneys for Defendant.

SECOND DEFENSE.

For a second defense defendant says:

1. Defendant admits that it is a corporation, as alleged, with its principal place of business at Jerome, Yavapai County, Arizona.

2. In connection with the above admission defendant further shows to the court and avers—

(a) That it is the owner, in possession of, and is, and was, during all of the time of the cutting of said timber complained of in plaintiff's complaint, opening, developing, and operating its own mines near the city of Jerome, known as the United Verde group of mines.

(b) That in the said operation of said mines and carrying on of the said business of the said mining of said defendant, defendant during all of said time extracted from said mines of said company large and extensive quantities of copper, gold, and silver bearing ores, all of which was so heavily charged with sulphur that it made it as necessary to burn the sulphur out of all of said ores before treatment as it was to extract it from said mines in order to make said mining profitable to said
7 defendant and enable it to continue its said mining.

(c) Defendant therefore further gives the court to know, and alleges, that the said 6,496½ cords of wood so charged to have been unlawfully cut from the public mineral lands of the United States were so cut by Rafael Lopez, who was then and there a citizen of the United States and a bona fide resident of Arizona, under contract from defendant from said public mineral lands, and was used by defendant for the said purpose, and the only purpose, of burning the sulphur from its ores so extracted and mined from its own mines, and on its own mining ground, in order to prepare its said ore for treatment, to the extent that the said copper, gold, and silver contained therein might thereafter be extracted therefrom.

Wherefore defendant avers that the said wood was so used by defendant for its mining purposes; and that the same is permitted by act of Congress, approved June 3, 1878; because, therefore, defendant says "actio non;" and, therefore, prays judgment for cost and for general relief.

HAWKINS & WILSON,
Attorneys for Defendant.

THIRD DEFENSE.

For a third defense defendant avers:

That plaintiff should not be permitted to maintain her cause of action herein against defendant, because defendant avers that said Rafael Lopez cut and delivered said wood under contract with said defendant for said mining purposes.

That the said Lopez was a bona fide citizen of the United
8 States, and so are the incorporators of said defendant company.

That said timber was so cut and delivered to defendant before defendant had notice of any rule of the land department of the United States forbidding the same.

Wherefore defendant prays judgment for cost and for general relief.

HAWKINS & WILSON,
Attorneys for Defendant.

FOURTH DEFENSE.

For a fourth defense defendant says:

That plaintiff should not be permitted to recover $38,976.75, or any other sum, because defendant used said timber for said mining purposes.

Defendant further says that in the event its said defenses hereinbefore set up should not be sustained, the value of said timber as it stood on the ground was not of a sum exceeding ten cents per cord, and that such timber is not now worth more.

That defendant and said Lopez were not willful trespassers in any event, but were acting under the full belief, and still believe, that the same was authorized by said act of Congress.

9 Wherefore defendant prays judgment that plaintiff take nothing by her suit; that defendant go hence without day, with cost, and for general relief.

UNITED VERDE COPPER COMPANY,
By HAWKINS & WILSON,
Attorneys for Defendant.

In the district court of the fourth judicial district of the Territory of Arizona, having and exercising the same jurisdiction in all cases arising under the Constitution and laws of the United States as is vested in district and circuit courts of the United States.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
UNITED VERDE COPPER COMPANY, A corporation, defendant.
} Judgment.

On this second day of December, 1902, this cause came on for hearing on the demurrer to the amended complaint herein;

Plaintiff appearing by United States attorney, F. S. Nave, and defendants, by its attorney, Hawkins & Wilson, and the cause having been argued to said court by respective counsel on the said demurrer to the said amended complaint, was submitted to the court for decision and judgment;

10 Now, on this third day of December, 1902, the court having considered the same, finds the issues of said demurrer in favor of the defendant and sustains the same, and the plaintiff having declined to amend its said amended complaint and having elected to stand on said amended complaint;

Now, therefore, it is ordered, adjudged, and decreed that the plaintiff take nothing by its said amended complaint, and defendant go hence without costs.

Done in open court this third day of December, 1902.

RICHARD E. SLOAN, *Judge.*

In the district court of the fourth judicial district of the Territory of Arizona, having and exercising the same jurisdiction in all cases arising under the Constitution and laws of the United States as is vested in district and circuit courts of the United States.

November term, 1902. Hon. Richard E. Sloan, judge, presiding.

Minute record.

UNITED STATES
vs.
UNITED VERDE COPPER COMPANY. } No. 93 C.

NOVEMBER 17, 1902.

Case set for trial December 1st, 1902.

11 DECEMBER 2ND, 1902.

Demurrer to the complaint in said cause is submitted to the court by counsel without argument, Frederick S. Nave, U. S. attorney, personally appearing for the plaintiff, and J. J. Hawkins, esq., personally appearing for defendant.

DECEMBER 3RD, 1902.

The court being fully advised in the premises, sustains the demurrer to the complaint filed in said cause. Plaintiff, by the U. S. attorney, Frederick S. Nave, having refused to amend its said complaint, and having elected to stand thereon, it is ordered that it take nothing thereby and that judgment be entered for the defendant. Thereupon plaintiff, in open court, gave notice of appeal.

UNITED STATES OF AMERICA,
Territory of Arizona, Fourth Judicial District, ss:

I, J. M. Watts, clerk of the United States district court for the fourth judicial district of Arizona, do hereby certify that the above and foregoing is a full, true, and complete copy and transcript of the amended complaint, amended answer, judgment, and all minute entries of
12 record with notice of appeal, in the case of the United States vs. United Verde Copper Company, No. 93 C, as the same appears of record and on file in this office.

Witness my hand and the seal of said court at Prescott, this 13th day of December, A. D. 1902.

[SEAL.] J. M. WATTS, *Clerk.*

(Endorsed:) No. 816. In the supreme court of the Territory of Arizona. United States of America vs. United Verde Copper Company. Transcript on appeal. Filed Dec. 20, 1902. S. M. Cullom, clerk.

13 In the supreme court of the Territory of Arizona.

Be it remembered that heretofore and on to wit the 13th day of January, A. D. 1903, the same being one of the regular juridical days of the January term, A. D. 1903, of said court, the following order was had

and entered of record in said court, which said order is in words and figures, as follows, to wit:

UNITED STATES OF AMERICA, APPELLANT,
vs.
UNITED VERDE COPPER COMPANY, A CORPORATION, APPELLEE. } No. 816.

On motion of Jno. J. Hawkins, esq., attorney for appellee herein, it is ordered that this cause be submitted on briefs.

On Friday, March 20th, 1903, that being a regular juridical day of the January term, A. D. 1903, of said court, the following record in this case for this day was made, to wit:

[Title of cause.]

This cause having been heretofore submitted and by the court
14 taken under consideration, and the court having considered the same and being fully advised in the premises: It is ordered that the judgement of the lower court be and the same is hereby affirmed.

And afterwards and upon to wit the same day the following other order was had and entered of record in said court in said cause:

[Title of cause.]

In this cause Frederick S. Nave, esq., attorney for appellant, in open court, gave notice of appeal from the judgment of this court to the Supreme Court of the United States, and prayed the court for an allowance of such an appeal; whereupon, it was ordered by the court that an appeal be granted as prayed for, and the remittitur stayed for sixty days.

15 In the supreme court of the Territory of Arizona.

UNITED STATES OF AMERICA, APPELLANT,
vs.
UNITED VERDE COPPER COMPANY, APPELLEE. } No. 816.

Appeal from the district court of the fourth judicial district. Hon. R. E. Sloan, judge.

Mr. Frederick S. Nave, U. S. attorney, and Mr. John H. Campbell, assistant U. S. attorney, for appellant; Mr. John J. Hawkins for appellee.

Opinion by DOAN, Justice:

The complaint in this action, brought by the United States against the United Verde Copper Company, a corporation, alleges that one Rafael Lopez, a citizen of the United States and a bona fide resident of the Territory of Arizona, between the 15th day of February, 1900, and the 17th day of April, 1901, wrongfully cut and removed from the unsurveyed public mineral lands of the United States a large amount of timber, the property of the United States, and sold the same to the defendant, and that the defendant used the timber for the purpose of roasting ore at its mines, situated in the Territory, in violation of
16 the act of Congress of June 3, 1878, and of the rules and regulations of the Secretary of the Interior promulgated under the authority of the act. A general demurrer was interposed to the com-

plaint, and a special demurrer on the ground that the complaint alleged that the timber was used by the defendant "for the purpose of roasting ore, which the defendant had a right to do under the act," such use being "licensed and permitted by the act." The demurrer was sustained and judgment entered thereon for the defendant.

The legal right of the United States to recover the value of the timber from the one who unlawfully cuts it or from any purchaser of such timber is well established. (Wooden Ware Co. v. United States, 106 U. S., 432; Northern Pac. R. R. Co. v. Lewis, 162 U. S., 376.)

The absolute ownership of these lands being in the United States, no one had the right to enter upon the lands or cut timber therefrom without its consent. The Government chose to make some exceptions in favor of certain classes of people, to whom were given the right to cut timber for certain purposes. The broad general rule being against the right, and the right to cut being exceptional for specified purposes only, such right, if acquired by the defendant by reason of the compliance with the provision of the statute, should have been shown by it. In the absence of evidence establishing such right the presumption is that the cutting is illegal, and as a matter of practice a complaint simply
17 alleging the cutting would state a cause of action, but in this instance the complaint has gone farther and has alleged the purposes for which and the conditions under which the cutting was done, thus relieving the defendant from the necessity of such showing, and has clearly presented for the consideration of the court the question whether or not timber cut from the public mineral domain may, under the terms of the act, be used for roasting ore.

If such use is within the terms of the act, then the demurrer to the complaint was properly sustained. If such use is not within the terms of the act, then the complaint states a good cause of action against the defendant.

The act in question, omitting the parts not material, is as follows:

"All citizens of the United States and other persons, bona fide residents of the * * * Territories of * * * Arizona, * * * shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said States, Territories, or districts of which such citizens or persons may be at the time bona fide residents, subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes." (1 Supp. R. S., p. 166.)

Under this act the Secretary of the Interior, on January 18, 1900,
18 promulgated certain rules and regulations governing the felling and removing of timber from the public domain, for mining and domestic purposes, such rules, so far as material, being as follows:

"4. The uses for which the timber may be felled or removed are limited by the wording of the act to 'building, agricultural, mining, or other domestic purposes.'

"5. No timber is permitted to be felled or removed for purposes of sale or traffic, or to manufacture the same into lumber or other timber

product as an article of merchandise, or for any other use whatsoever, except as defined in section 4 of these rules and regulations.

"7. No timber is permitted to be used for smelting purposes, smelting being a separate and distinct industry from that of mining.

"10. These rules and regulations shall take effect February 15, 1900, and all existing rules and regulations heretofore prescribed under said act by this Department are hereby rescinded."

It will be observed that by section 7 of these rules the Secretary of the Interior decides that the use of timber for smelting purposes is not permitted under the license given by the above act, for the reason that smelting is a separate and distinct industry from that of mining. Under these rules this action was brought on the theory that the use of the timber for roasting ore was a use for smelting purposes and hence prohibited.

The power and authority of the Secretary of the Interior to make such rules as may be proper with respect to the cutting and removal of
19 timber under the act has been upheld by the courts. (North. Pac. R. R. Co. v. Lewis, 162 U. S., 376; U. S. v. Williams, 12 Pac., Mont., 851.)

While the act directly clothes the Secretary with the power to prescribe rules and regulations concerning the cutting and removal of timber, and his interpretation of the intent and true meaning of the act would be entitled to great weight, it will not be contended that the Secretary by any rule or regulation has the power to enlarge or restrict the purposes expressed in the act for which such timber may be used; so that, if by the act itself Congress has given the right to use such timber for roasting ore, any rule promulgated by the Secretary that would prohibit such use would be unauthorized and illegal. We have therefore to consider whether such use is authorized by the act itself. The act allows such use for building, agricultural, mining, and other domestic purposes. It is apparent, therefore, that if the use of timber for roasting ore is entitled to be classed as a use for "mining purposes," such use is within the terms of the act.

We think it was the intent of Congress by this act to encourage and develop the industry of mining, and in so doing to enable miners to make free use of the timber on the mineral lands in the development of their mines and for all purposes that may be classed under the head of mining, and that they were not restricted in such use to the employment of timber in the mine itself, but its application and use was
20 intended to be granted in the many ways requisite and necessary for the proper development of the industry.

While it was intended that those engaged in mining, whether individuals or incorporated companies, should have the privilege to cut and use timber necessary for the development of their mines and for purposes directly connected therewith, it was not the intention of Congress that plants erected for the independent business of smelting ores, commonly known as custom smelters, should be allowed to make use of such timber in such enterprises for the reason, as given by the Secretary of the Interior, that such business is "a separate and distinct industry from that of mining."

In the only case which we have found in which this question is discussed (United States vs. Richmond Mining Company, 40 Fed., 415),

the U. S. circuit court for Nevada held that the use of wood and charcoal in the reduction of ores and refining the product thereof by mill or furnace process, if not strictly a mining use, was certainly a use incident to mining and closely connected with it. Those engaged in reducing ores within the State were therein held to be within the benefits conferred by the above statute and entitled to use wood or timber cut from Government mineral lands for that purpose. The court in that case decided that the defendant company, a corporation, had full right
21 to purchase wood cut from public mineral lands and charcoal made from such wood, and use the same at its reduction works, and that the statute above cited was a complete defense to the action brought by the Government against it therefor.

This case was taken on writ of error to the U. S. Supreme Court, but was there dismissed on motion of the plaintiff in error without a review of the same, thus leaving the decision above cited the only authority we have on this question. This case was tried, however, prior to the adoption and promulgation of the rule above quoted.

We believe that the defendant in this instance was fully protected by the statute in using the wood sued for, under the license granted in the act to use wood for mining purposes, unless the roasting of ores should properly be classed as a part of the process of smelting and is for that reason not included in the general classification of mining purposes.

The complaint alleges that this wood was used by the defendant for the purpose of roasting ore at its mines in Yavapai County, Arizona. It is a matter of common knowledge that in this Territory the roasting of ore at the mines from which it is taken is ordinarily accomplished by piling the ore and the wood mingled with it in piles in the open air, and by igniting the wood the fire is communicated to the sulphurous or other combustible ingredients in the ore and thus, by the heat
22 generated by its own combustion and that of the wood mingled with it, the volatile substances are driven off in vapor, smoke, and gases from the ore thus treated. By this treatment the ores that are extremely sulphide or highly charged with other volatile substances are relieved from a large portion thereof and are the more readily treated by smelting or other processes of reduction, and besides require less fluxing material for such reduction and are also lighter in weight and for that reason when shipped to other points for smelting or further treatment of any kind cost less for freight. Construing the pleading strictly against the pleader, as it is our duty to do, we must assume that the wood was not used in a custom smelter, but was used by the defendant for roasting ore obtained from its mines in the ordinary manner above described.

It is urged by the counsel for the appellant that—

"Both as a matter of common knowledge, and as a matter of definition of the words, 'roasting ore' is a part of the process of smelting, and the use of wood for the purpose of roasting ore as set forth in the complaint is using it for smelting purposes.

"Therefore the allegation of the complaint being that the timber was used by the appellee for roasting ore, it states a proper cause of action and is not obnoxious to demurrer."

In support of this proposition he quotes the definition from the Standard Dictionary of the verbs "smelt" and "roast," as follows:

"SMELT: To obtain (a metal) from the ore by a process that includes fusion; also in a more limited sense to reduce ores, sweepings, metallurgical products, etc., by fusion in a furnace."

23 "ROAST: (The only definition applicable in the discussion.) 4. Metal. To heat highly (metallic ores) with access of air, but without fusing, for the purpose of driving off or volatilizing impurities or for oxidizing them."

We think that from the authority herein cited by himself the counsel has proven the reverse of the proposition, and that without looking farther than the definition above it is shown that smelting, even in its more general sense, is the obtaining of metal from the ore by a process that includes fusion, while roasting ore is to heat highly with access of air, but without fusing, thereby distinguishing the roasting of ore from smelting rather than including it therein. But upon looking farther we find that the definitions given by Webster are:

"SMELT: 1. To melt or fuse, as ore, for the purpose of separating the metal from extraneous substances."

"ROAST: 5. To dissipate by heat the volatile parts of, as ores."

The definitions given by Worcester are:

"SMELT: 1. To melt or fuse, as ore, for the purpose of separating metal from extraneous substances."

"ROAST: 5. To expel volatile matters from by exposing to heat, as ores."

These are the general definitions as given in the dictionaries recognized as authority by the courts and by our people generally. But in the case of Lowrey v. Cowles Electric Smelting & Aluminum Co., 68 Fed., 354, Judge Taft, of the U. S. circuit court, has quoted in his

24 decision some very full and satisfactory definitions of these terms that will be of interest in this determination:

"'Smelting,' by its derivation, is synonymous with 'melting,' but in metallurgy and the commercial manufacture it has come to have a more contracted meaning. Thus Prof. Morton, the expert for the defendant, quotes from a treatise on metallurgy by Frederick Overman, this distinction between 'melting' and 'smelting':

"'When metallic ores are exposed to heat and such reagents as develop the metal we call it "smelting," in contradistinction from the mere application of heat, causing the ore to become fluid, which is called "melting."'

"Prof. Morton, however, is of the opinion that 'smelting' really means nothing more than 'melting apart,' and that any process in which the melting apart or separation of a metal from its ore is effected by the use of electricity is correctly described as electric smelting. * * *

"Prof. Langley, the expert for the complainant, thus defines 'smelt':

"'The word "smelt" is customarily applied to that class of metallurgical operations in which a metal results, said metal being in a metallic condition and obtained from an ore or mixture in which the metal originally existed in the form of a chemical compound. In all instances the operation of smelting results in producing something different from

the body operated upon, and this change is brought about by the action of heat and chemical force. * * * "Smelting," then, may be said generally to indicate the melting of something by heat, accompanied by a chemical change induced by the substances present in contact with the ore. * * * The substance added to bring about a chemical change in the earthy matters of the ore are called "fluxes," and they generally consist of limestone or of limestone and clay, so that in the practical sense of the word one may say the term "smelting" always involves melting by heat and the concomitant presence of a chemical change.'"

These definitions of the term "smelt," taken in connection with the fact that smelting is ordinarily accomplished by means of extensive plants erected for that purpose, and very often at great distances from the mines producing the ores smelted, while only the most extremely sulphide ores are roasted, and the roasting, when done, is frequently accomplished in a primitive manner by the combustion in the open air of the sulphur, arsenic, and more volatile portions of the ore, and in all cases, whether in the primitive manner mentioned or in reverberatory furnaces, is accomplished without any fusion or melting of the metal contained in the ore, satisfy us that the process of roasting ores, instead of being included in, is entirely different and distinct from smelting, and the use of wood therefor is properly included among the uses authorized by the statute for "mining purposes."

Where a company extracts the ores from its mines, carries that part needing such treatment to the roasting dump, uses wood in roasting therefrom the sulphur, arsenic, and other volatile substances, and then runs the ore through its reduction plant and converts the same into a merchantable product, the extraction of the ore from the mines, the roasting it upon the dumps preparatory for its final reduction in the furnaces and other reduction plants established for that purpose, is clearly a part of mining, and the whole process of such extraction and preparation, taken together, is within the protection of the statute.

We feel that in the consideration of this subject the practical, usual, and ordinary meaning of the words "mining" and "mining purposes," etc., should govern, rather than any narrow meaning that might be argued out from the definitions given by the lexicographers.

The roasting of the more sulphurous of the ore taken from the mine, on the dump near such mine, in order to prepare it for the operation of smelting, is as much a part of mining as the separation of the ore from the rock enclosing or surrounding it by the laborers, or the handling of such ore by machinery after having been taken from "in place." They are all steps toward taking the mineral from the elements originally mixed with it and surrounding it and preparing it for the purposes of reduction to metal in merchantable shape. They are not a part of or connected with smelting or any treatment of the ore during its reduction in the smelter. We feel that it was the intention of Congress in passing this act that it should be so construed in order that through the license therein granted the building up of the vast mineral resources of the nation might be accomplished, and the nation at large benefited as well

as the citizens of the mining regions, and the history of mining since the passage of this act has shown the wisdom of Congress in enacting the law.

The demurrer to the complaint was properly sustained.

27 The judgment of the lower court is therefore affirmed.

FLETCHER M. DOAN,
Associate Justice.

We concur:

EDWARD KENT, *C. J.*
GEO. R. DAVIS, *A. J.*

(Endorsed:) No. 816. In the supreme court of the Territory of Arizona. U. S. of America vs. United Verde Copper Co. Opinion by Doan, J. Recorded Book 5, pages 295–303. Filed March 20, 1903. S. M. Cullom, clerk.

28 In the supreme court of the Territory of Arizona.

UNITED STATES OF AMERICA, appellant,
vs.
UNITED VERDE COPPER COMPANY, A CORPORATION, appellee. } Appeal.

Now comes the United States of America, and appeals from each and every the judgments, orders, and decrees rendered in the above-entitled cause, and prays that this appeal be allowed, and that a transcript of the record, and of all and singular the pleadings, orders, judgments, decrees, minute entries, and all other proceedings in the said cause, may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court of the United States may proceed to hear said cause, and that the said judgments, orders, and decrees appealed from may be reversed and a decree made in accordance with appellant's rights in the said cause, and for such other order, judgment, or decree as to the Supreme Court of the United States shall seem good.

FREDERICK S. NAVE,
United States Attorney for the Territory of Arizona.

The above appeal is hereby allowed, this 8th day of May,
29 A. D. 1903, and a transcript, as above prayed for, is ordered to be made and certified to the Supreme Court of the United States.

EDWARD KENT,
Chief Justice of the Supreme Court of the Territory of Arizona.

(Endorsed:) No. 816. In the supreme court of the Territory of Arizona. United States of America vs. United Verde Copper Company, a corporation. Petition for and allowance of appeal to U. S. Supreme Court. Filed May 8th, 1903. S. M. Cullom, clerk.

30 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Territory of Arizona, ss:

I, Shelby M. Cullom, clerk of the supreme court of the Territory of Arizona, do hereby certify that the foregoing pages, numbered from 1 to

28, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of United States of America, appellant, against the United Verde Copper Company, a corporation, appellee, as the same remain of record and on file in said office.

Also that the citation attached hereunto is the original citation issued by said supreme court of the Territory of Arizona.

I further certify that the assignment of errors attached hereunto is the original assignment of errors filed in said supreme court in said cause.

In testimony whereof I have caused the seal of the said supreme court of the Territory of Arizona to be hereunto affixed at the city of Phoenix, in the Territory of Arizona, this 2nd day of June, A. D. 1903.

[SEAL.] SHELBY M. CULLOM,
Clerk Supreme Court of the Territory of Arizona.

31 In the Supreme Court of the United States. October term, A. D. one thousand nine hundred and three.

UNITED STATES OF AMERICA, APPELLANT,
vs.
UNITED VERDE COPPER COMPANY, A CORPORATION, appellee. } Assignment of errors.

Now comes the United States of America, and shows that the supreme court of the Territory of Arizona erred in that:

1. It affirmed the order of the district court of the fourth judicial district of the Territory of Arizona, sustaining appellee's demurrer to the appellant's amended complaint filed in the above-entitled cause.

2. It affirmed the judgment of the district court of the fourth judicial district of the Territory of Arizona that the appellant take nothing by its amended complaint in said cause, and that the defendant go thence without costs.

FREDERICK S. NAVE,
United States Attorney for the Territory of Arizona.

32 (Indorsed:) No. 816. In the supreme court of the Territory of Arizona. United States of America vs. United Verde Copper Company. Assignment of errors. Filed May 23, 1903. S. M. Cullom, clerk.

33 In the supreme court of the Territory of Arizona.

UNITED STATES OF AMERICA, APPELLANT,
vs.
UNITED VERDE COPPER COMPANY, A CORPORATION, appellee. } Citation to defendant to appear before the Supreme Court of the United States.

To the United Verde Copper Company, a corporation, greeting:

Whereas the United States of America has lately appealed to the Supreme Court of the United States from a decree lately rendered in the supreme court of the Territory of Arizona, made in favor of you, in above-entitled cause, you are therefore hereby cited to appear before the said Supreme Court of the United States on the second Monday of

October next to do and receive what may pertain to justice in the premises.

Done this 8th day of May, A. D. 1903.

EDWARD KENT,
Chief Justice of the Supreme Court of the Territory of Arizona.

Due and legal service of the foregoing citation acknowledged this 23rd day of May, A. D. 1903.

UNITED VERDE COPPER COMPANY,
By JNO. J. HAWKINS, *Its Attorney.*

34 (Indorsed:) No. 816. In the supreme court of the Territory of Arizona. United States of America vs. United Verde Copper Company. Citation. Filed May 23, 1903. S. M. Cullom, clerk.

(Indorsement on cover:) File No. 18986. Territory of Arizona supreme court. Term No., 335. The United States, appellant, vs. The United Verde Copper Company. Filed June 27, 1893. Office of the clerk Supreme Court U. S. Received Jun. 27, 1903.

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